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2011 NOV 15 A 1 21

November 11, 2011

AZ CORP COMMISSION  
DOCKET CONTROL

File No. 509.01

**TRANSMITTED VIA FIRST CLASS MAIL**

Arizona Corporations Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007  
Attn: Docket Control

Arizona Corporation Commission  
**DOCKETED**

NOV 15 2011

Re: In re the Matter of Mark W. Bosworth, et al.  
*Docket No. S-20600A-08-0340*



Dear Sir and/or Madam:

Enclosed herewith are the original and 14 copies of our Reply to Response to Motion to Dismiss, etc. in the above-referenced matter. Please file the same and conform and return one copy to us in the stamped envelope provided.

Sincerely,

THE ADAMS LAW FIRM, PLLC

By

Al Cedro

Paralegal to Jeffrey R. Adams, Esq.

AMC/hs  
Enclosure(s)

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AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the Matter of:

MARK W. BOSWORTH and LISA A.  
BOSWORTH, husband and wife;

STEVEN G. VAN CAMPEN and DIANE  
V. VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.  
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE  
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES,  
LLC, and Arizona limited liability  
company;

3 GRINGOS MEXICAN INVESTMENTS,  
LLC, an Arizona limited liability company;

Respondents.

Docket No. S-20600-A-08-0340

**REPLY TO RESPONSE TO  
MOTION TO DISMISS RE:  
FAILURE TO PLEAD WITH  
PARTICULARITY AND FAILURE  
TO PROPERLY ALLEGE BASIS  
FOR PIERCING CORPORATE  
VEIL**

**(Oral Argument Requested)**

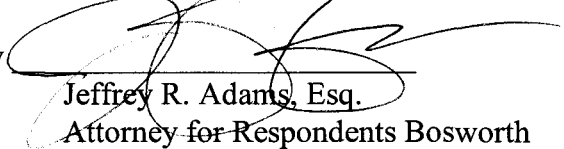
**(Assigned to the Hon. Mark E. Stern)**

Respondents Mark and Lisa Bosworth, husband and wife (collectively herein, "**Bosworths**" or "**Respondents**"), through their undersigned counsel, hereby file their Reply to the State's Response to their Motion to Dismiss premised upon the State's failure to plead its claims with particularity and failure to plead a basis for imposing personal liability upon the Bosworths. As set

1 forth in detail below in the accompanying Memorandum of Points and Authorities, the State has  
2 failed to demonstrate, legally, support for its contention that it is exempt from the particularity  
3 requirements of Rule 9, Ariz. R. Civ. P. Further, the State likewise fails to establish a legal basis  
4 upon which it is exempt from setting forth a legal basis upon which to pierce the corporate veils of  
5 the corporate Respondents. Accordingly, the Bosworths' Motion should be granted.

6  
7 Respectfully submitted this 11 day of November, 2011.

8 THE ADAMS LAW FIRM, PLLC

9 By   
10 Jeffrey R. Adams, Esq.  
11 Attorney for Respondents Bosworth

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. Rule 9, Ariz. R. Civ. P., Governs The State's Notice And Because the State's**  
14 **Notice Does Not Comply With That Rule, The Case Against The Bosworths Must**  
**Be Dismissed.**

15 In its Response, the State does not argue that its Notice does not satisfy the particularity  
16 requirements of Rule 9(b), Ariz. R. Civ. P. Rather, the State simply asserts that it is not required to  
17 comply with that Rule. However, the State's argument is incorrect.

18 In the Response the State asserts that Division notices are subject to a "notice pleading rule"  
19 which the State asserts is set forth at Arizona Administrative Code Rule R14-4-306. See Response  
20 at 3:1-3. However, the State's assertion is wrong. A review of Rule R14-4-306 reveals that it  
21 neither specifically nor generally addresses precisely what is or is not required in a Division notice.

22 In further support of its argument, the State asserts that its conclusion that Division notices are  
23 subject merely to a "notice pleading rule" is "consistent with [A.R.S.] § 41-1061(B)(4) of the  
24 [Arizona Administrative Procedures Act] which states that the notice given requires '[a] short and  
25 plain statement of the matters asserted.'" See Response at 3:3-6 (emphasis added). However, the  
26 State is in error again.  
27  
28

1 Pursuant to A.R.S. § 41-1061(A), a party to an adjudicative proceeding is entitled to  
2 "reasonable notice." Further, while A.R.S. § 41-1061(B)(4) states that a notice need contain "[a]  
3 short and plain statement of the matters asserted," the Statute goes on to require that a short and plain  
4 statement is sufficient only if "the agency or other party is unable to state the matters in detail at the  
5 time the notice is served" and requires thereafter a party is entitled to "a more definite and detailed  
6 statement." A plain reading of the foregoing not only implies but states specifically that parties to  
7 administrative proceedings are entitled to particularity as opposed to generalities. In other words,  
8 a Division notice must be something much more than a notice pleading.  
9

10 The other two Rules relied upon by the State are R14-3-101(B) and 106(E), pursuant to which  
11 the State asserts that the liberal construction and speedy determination standards applicable to the  
12 Rules and proceedings, respectively, imply that a Division notice need not include particularity.  
13 However, neither of those Rules provide guidance of any kind regarding what is required in a  
14 Division Notice.  
15

16 As acknowledged by the State, the Arizona Rules of Civil Procedure must be followed in  
17 administrative proceedings when the Administrative Rules or regulations do not specifically address  
18 procedural and substantive issues. *See* Response at 13-15; *see also* R14-3-101(1). This premises  
19 is echoed by the Arizona Appellate Courts. *See e.g., Western Water Works v. Industrial Com'n of*  
20 *Ariz.*, 213 Ariz. 521, 144 P.3d 535 (Ct.App. 2006) ("[A]lthough the Arizona Rules of Civil  
21 Procedure do not govern workers' compensation proceedings ..., they provide guidance and support  
22 our analysis.) (emphasis added). Importantly, the fact that the Commission should follow the  
23 Arizona Rules of Civil Procedure, including Rule 9(b), is supported by the law that provides that the  
24 Arizona Rules of Civil Procedure apply in administrative appeals filed pursuant to A.R.S. § 12-901  
25 *et seq.* Logic dictates that in the absence of specific rules otherwise, if appeals of administrative  
26  
27  
28

1 decisions require compliance with the Arizona Rules of Civil Procedure, administrative proceedings  
2 themselves should follow those same rules in the absence of specific rules.

3 Interestingly, the most significant argument advanced by the State in opposition to the  
4 Bosworths' Motion is that providing particularity in the Notice would have been difficult because  
5 the State's case allegedly involves dozens of investors who allegedly purchased millions of dollars  
6 worth of securities. *See* Response at 3:17-21. However, that is a faulty argument. Respondents  
7 herein have not argued that the State was required to articulate every instance of misconduct. Rather,  
8 the Bosworths argue that at a minimum, the particularity requirements had to be met by providing  
9 at least some level of particularity that would serve to identify specific conduct by the Bosworths for  
10 which they are accountable separate and distinct from the conduct of other Respondents. However,  
11 the State provided not even a semblance of particularity in the Notice. Even the "examples" offered  
12 up by the State in its Response provide nothing of substance and are, rather, merely conclusory  
13 statements at best, which is improper. Further, the State completely ignores the law prohibiting the  
14 lumping together of groups of defendants. Accordingly, because the Administrative Rules are silent  
15 on the issue of what is required in the Notice, inasmuch as no legal authority exempts the State from  
16 compliance with the particularity requirements set forth in Rule 9(b), Ariz. R. Civ. P., and due the  
17 State's tacit admission that the Notice does not comply with the particularity requirements set forth  
18 in Rule 9(b), Ariz. R. Civ. P., this matter should be dismissed as to the Bosworths.

22 **II. Rule 9(b), Ariz. R. Civ. P., Applies To The State's Claims Premised Upon A.R.S.**  
23 **§ 44-1991.**

24 Without citing to any authority, the State argues that Rule 9(b), Ariz. R. Civ. P., does not apply  
25 to Notices alleging violations of A.R.S. § 44-1991. In making this argument, the State asserts that  
26 the elements of such a claim are set forth in the Statute itself. However, that statement is incorrect.

1 Alleging a violation of the foregoing statute is not accomplished by alleging generically that  
2 one has violated the statute. The fact is, A.R.S. § 44-1991 does not, as is the case with respect to  
3 R14-3-306, articulate precisely what must be contained within a Division notice alleging a violation  
4 of the statute. Accordingly, absent statutory guidance and instruction, we default to the Arizona  
5 Rules of Civil Procedure and specifically Rule 9(b) because A.R.S. § 44-1991 pertains to fraud in  
6 connection with the sale of securities. And because the State does not deny that its notice fails to  
7 comply with that Rule, it is deficient and the claims against the Bosworths must be dismissed.  
8

9 Further, factual details are necessary to decipher which of the collective group of Respondents  
10 is liable for which conduct. That is precisely the rationale for the law prohibiting the lumping  
11 together of groups of people or entities in alleging fraud related types of claims. And because the  
12 State failed to distinguish the conduct of the Bosworths from that of the other Respondents, it has  
13 failed to meet its notice obligations. Accordingly, this matter should be dismissed as to the  
14 Bosworths.  
15

16 With respect to the balance of the State's arguments in its Response, it is clear that it believes  
17 that the State is grasping at straws to justify its failure to comply with its particularity obligations.  
18 The State has not complied with the well-established law governing the piercing the corporate veil.  
19 There is no Rule or regulation that establishes or states that Divisions notices are subject to simple  
20 notice pleading standards. Accordingly, in the absence of such a mandate, Division notices must  
21 meet with the particularity requirements set forth in Rule 9(b), Ariz. R. Civ. P., in the event the  
22 Division's claims against a respondent sound in fraud. Because the State failed in the foregoing  
23 regards, its claims against the Bosworths must be dismissed.  
24

### 25 **III. Conclusion.**

26 Based on the foregoing, this matter as it pertains to Respondents Bosworth should be  
27 dismissed with prejudice.  
28

1 Respectfully submitted this 11 day of November, 2011.

2 THE ADAMS LAW FIRM, PLLC

3 By 

4 Jeffrey R. Adams, Esq.

5 Attorney for Respondents Bosworth

6  
7 Original of the foregoing sent via  
8 First Class Mail and ~~electronic~~  
9 ~~mail~~ this 11 day of November, 2011 to:

10 Docket Control  
11 Arizona Corporation Commission  
12 1200 West Washington  
13 Phoenix, Arizona 85007

14 Copy of the foregoing sent via  
15 First Class Mail and electronic  
16 mail this 11 day of November, 2011 to:

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18 Administrative Law Judge  
19 Hearing Division  
20 Arizona Corporation Commission  
21 1200 West Washington  
22 Phoenix, Arizona 85007

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